



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 9

BRINKS HOFER GILSON & LIONE
P O BOX 10395
CHICAGO, IL 60611

COPY MAILED

JAN 30 2003

In re Application of
Tomohiro Ohzuru et al
Application No. 09/991,066
Filed: November 9, 2001
Attorney Docket No. 50404-11

: OFFICE OF PETITIONS
:
: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3)
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed November 13, 2002, to accept an unintentionally delayed claim under 35 U.S.C. § 365 for the benefit of a prior-filed international application.

The petition is **DISMISSED** as moot.

Petitioner seeks acceptance of an unintentionally delayed claim under 37 CFR 1.78(a)(3) because the Preliminary Amendment dated March 8, 2002, inadvertently omitted the statement required by 37 CFR 1.78(a)(2) regarding publication of an international application.

Effective December 28, 2001, 37 CFR 1.78(a)(2) was amended to eliminate the requirement that, if the application claims the benefit of an international application, the first sentence of the specification must include an indication of whether the international application was published under PCT Article 21(2) in English. The Office is eliminating this requirement because: (1) The Office will not delay publication of the application if this requirement is not met; and (2) this information can be obtained from other sources. Note 66 *Fed. Reg.* 67088 (Dec. 28, 2001), a copy of which accompanies this decision on petition. For the above reasons, the petition under 37 CFR 1.78(a)(3) is dismissed as involving a moot issue.

In view of the above, the \$1,280 fee submitted for the petition under 37 CFR 1.78(a)(3) is unnecessary. Accordingly, the \$1,280 petition fee submitted will be credited to Deposit Account No. 23-1925 as authorized.

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859).

This application is being forwarded to Technology Center AU 1733 for examination in due course and for consideration by the Examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 365 to the prior-filed international application(s).

A handwritten signature in cursive script, reading "Frances Hicks".

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Copy of 66 *Fed. Reg.* 67088 (Dec. 28, 2001).